

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA, SOUTHERN DIVISION**

ASD SPECIALTY HEALTHCARE, INC. d/b/a
ONCOLOGY SUPPLY,
2801 Horace Shepard Drive
Dothan, Alabama 36303,

Plaintiff,

v.

ROBERT G. HICKES, M.D.
1301 Trumansburg Road, Suite Q
Ithaca, NY 14850,

and

ROBERT G. HICKES, M.D., P.C.
1301 Trumansburg Road, Suite Q
Ithaca, NY 14850,

Defendant.

CIVIL ACTION

NO.: 1:05cv592 - MHT

MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

The Plaintiff, ASD Specialty Healthcare, Inc., ("ASD"), by and through its counsel, hereby moves this Honorable Court for leave to file the attached Second Amended Complaint. In support of this motion, Plaintiff states the following:

1. ASD filed this action on June 22, 2005, to obtain payment for the medical and pharmaceutical products it supplied to Defendant. By leave of court, ASD filed its First Amended Complaint on January 25, 2006.

2. Plaintiff seeks to amend its First Amended Complaint to correct two clerical errors. The first appears in Paragraph 1 of its Complaint, which reads:

ASD is a California corporation, and does business as OSC, which has a principal place of business at 2801 Horace Shepard Drive, Dothan, AL 36303.

Since ASD has its principal place of business in the Texas, by this motion, Plaintiff seeks leave to amend Paragraph 1 of its First Amended Complaint to read:

ASD Specialty Healthcare, Inc. is a California corporation with its principal place of business in Texas. ASD Specialty Healthcare, Inc. operates under various d/b/a's or trade names, including Oncology Supply, which maintains an office at 2801 Horace Shepard Drive, Dothan, Alabama.

3. The second appears in Paragraph 4 of its First Amended Complaint, which reads:

This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1332(a) because (a) the plaintiff is a citizen of the State of California and State of Alabama, (b) the defendant is a citizen of the State of New York, and (c) the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

Since ASD has its principal place of business in the Texas, Plaintiff seeks leave to amend Paragraph 4 of its First Amended Complaint to read:

This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1332(a) because (a) the plaintiff is a citizen of the State of California and State of Texas, (b) the defendant is a citizen of the State of New York, and (c) the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

4. Although the deadline for amending pleadings set in the scheduling order has passed, Federal Rule of Civil Procedure 16(b) provides that such a deadline may be modified "for good cause."

5. Plaintiff urges that leave to amend its First Amended Complaint should be granted in this case. The proposed amendment changes only Paragraphs 1 and 4 of the First Amended Complaint, and has no impact on the Court's subject-matter jurisdiction over this action. Furthermore, the proposed amendment makes no changes to any of the factual allegations that are material to the claims Plaintiff asserts in this action, and, accordingly, will not prejudice Defendant. Accordingly, Plaintiff also urges that the Court order that the filing of Second Amended Complaint be made nunc pro tunc to the date of First Amended Complaint which it

amends and deemed a substitute for the First Amended Complaint so that Defendant has no need to answer the Second Amended Complaint.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests this Honorable Court to enter an Order allowing it leave to file the Second Amended Complaint attached hereto as Exhibit A and providing that the filing of Second Amended Complaint be made nunc pro tunc to the date of the First Amended Complaint which it amends and deemed a substitute for the the First Amended Complaint so that Defendant has no need to answer the Second Amended Complaint.

Respectfully submitted,

/s/ Heath A. Fite

Heath A. Fite (FIT011)

An Attorney for Plaintiff
ASD SPECIALTY HEALTHCARE, INC.

OF COUNSEL:

BURR & FORMAN LLP

3100 Wachovia Tower

420 North 20th Street

Birmingham, Alabama 35203-5206

Telephone: (205) 251-3000

Facsimile: (205) 458-5100

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2006, I have served a copy of the foregoing document by Notice of Electronic Filing to Clyde Ellis Brazeal , III.

/s/ Heath A. Fite

Heath A. Fite